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IN THE

Supreme Court of the United States

October Term, 1960

No. 67

ABRAHAM BRAUNFIELD, ISAAC FRIEDMAN, ALTER DIAMENT, S. DAVID FRIEDMAN and JOSEPH R. FRIEDMAN, *Appellants*

v.

THOMAS J. GIBBONS, Commissioner of Police of the City of Philadelphia, and VICTOR H. BLANC, District Attorney of the City of Philadelphia, *Appellees*

BRIEF FOR APPELLEES

On Appeal from the Final Order of a Three-Judge Court Sitting in the Eastern District of Pennsylvania Pursuant to 28 U. S. C. §2281 et seq.

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I.

COUNTER-STATEMENT OF QUESTIONS PRESENTED

1. Does the enforcement of the Pennsylvania Act of August 10, 1959, P. L. 660, which prohibits Appellants from conducting their retail businesses on Sunday, constitute an unconstitutional interference with the free exercise of religion on the ground that since Appellants observe the Saturday sabbath as required by their faith and refrain from commercial activity thereon, the closing of their businesses on Sunday, as well, would exert economic pressure upon them to engage in commercial activity on Saturday?

2. Does the Pennsylvania Act of August 10, 1959, P. L. 660, constitute a law "respecting an establishment of religion" within the prohibition of the due process clause of the Fourteenth Amendment to the United States Constitution on the ground that by prohibiting the retailing on Sunday of selected commodities, the Act prefers and protects certain religious sects?

3. Does the Pennsylvania Act of August 10, 1959, P. L. 660, violate the equal protection and due process clauses of the Fourteenth Amendment to the United States Constitution by prohibiting the retailing on Sunday of certain commodities and not others?

II.
SUMMARY OF ARGUMENT

The enforcement of the Pennsylvania Sunday Closing Law, which prohibits the retailing of certain commodities, does not interfere with Appellants' free exercise of religion within the ban of the First and Fourteenth Amendments. The Appellants, Orthodox Jewish merchants conducting businesses affected by the Act, are not seeking protection of their undoubted right to practice their faith, for the operation of their businesses is no part of their religion. To the contrary, they seek only protection of a privilege to carry on their profit making enterprises free from State regulation.

Appellants argue that compulsory Sunday closing works substantial financial injury upon them because they are required by their faith to abstain from commercial activity on the Saturday sabbath as well. Such economic pressure may, they contend, induce them to keep their stores open on Saturday, thereby violating cardinal principles of their theology.

Assuming this to be so, it affords no excuse for their non-observance of the statute. The economic hardship of which they complain falls equally upon entrepreneurs who, although permitted by their faith to engage in the daily operation of their businesses, nevertheless depend upon Sunday trade for their profit. To except Appellants from the observance of the Sunday Closing Law, but not merchants of other religions, would prefer and protect a particular religious sect to the detriment of other faiths in violation of the very constitutional commandment Appellants seek to invoke.

On the other hand, the impartial application of the Pennsylvania Act to all retail establishments coming within its purview will not constitute support of certain Christian sects by honoring their holy day and encouraging worship thereon. In view of the limited scope of the Sunday Closing Law under consideration, such a characterization

strains the imagination. In purpose and effect, the legislation speaks to matters economic and not religious. The Act springs from the desire of the citizens of Pennsylvania for a community day of rest and relaxation. The intense competitive conditions prevalent in certain types of retail businesses prevent entrepreneurs from achieving this result by individual action. Legislative regulation is necessary. That the valid social objective sought might be attained by other legislative means is not material to the determination of the constitutionality of the present Act. Once the Legislature has spoken, the wisdom of their selection is not the subject of judicial review.

Clearly, the challenged statute is not a law "respecting an establishment of religion," nor by its reasonable classification of certain commodities whose sale it prohibits does it otherwise violate the Fourteenth Amendment to the Constitution of the United States.

III.

ARGUMENT

1. THE ENFORCEMENT OF THE ACT OF AUGUST 10, 1959, P. L. 660, WHICH PROHIBITS APPELLANTS FROM CONDUCTING THEIR RETAIL BUSINESS ON SUNDAY, DOES NOT UNCONSTITUTIONALLY INTERFERE WITH THE FREE EXERCISE OF THEIR RELIGION EVEN ASSUMING ARGUENDO THAT THE CLOSING OF THEIR BUSINESS ON SUNDAY WOULD EXERT ECONOMIC PRESSURE UPON THEM TO ENGAGE IN COMMERCIAL ACTIVITY ON THE SATURDAY SABBATH.

The Colonial history of religion in America is the familiar recounting of intoleranee; quarrelsome religious sects, each secure in its own verity, sought by civil sanction to enforce their beliefs, and loosed bigotry upon the land. Tithes and taxes were by agents of the state collected. Those who upon occasion omitted to worship on a Sunday

in the chosen church of one colony were, for the first offense, subject to loss of communal allotment; for the second, to be whipped; and for the third offense to be put to death. Opinions out of tune with the melodic score of the Word of God, played according to prevailing fashion, were as rankest heresy punished.[1] Only slowly, painfully slowly, did the cause of religious freedom, indeed, the cause of religious toleration, championed by a few free thinkers in a few states, develop and spread.[2] So it was that even at the time of the adoption of the Constitution, five states still maintained established churches, while five others had but recently discarded their state religions;[3] the proponents of liberty of conscience had daily to do battle.

The First Amendment, therefore, with its guarantee against Federal prohibitions upon the free exercise of religion, stemmed as much from a desire for protection against a feared hegemony of dominant religious organizations in other states as it did from deep-seated philosophical and intellectual convictions favoring liberty of conscience. Nonetheless, the First Amendment achieved at least this much: A bastion of religious freedom was withdrawn from the ambit of national legislative action. Matters of conscience were dressed in shield and panoply, proof against congressional invasion. Forever free from official restraint were beliefs in and expression of religious

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1. See *Reynolds v. United States*, 98 U.S. 145, 162-63 (1878); *Davis v. Beason*, 133 U.S. 333 (1890); See also discussion in Zollman, American Church Law, pp. 4-8 (1933); Johnson, The Legal Status of Church-State Relationships in the United States 237 (1934).

2. Foremost of these were Thomas Jefferson and James Madison. See 8 Jeff. Works 113.

3. In 1787, Massachusetts, Connecticut and New Hampshire still retained their Congregational, and Maryland and South Carolina their Church of England establishment. Only shortly before had New York, New Jersey, Virginia, North Carolina and Georgia gone through the process of disestablishing their church. See Zollman, op. cit. supra at p. 4.

opinions even though they be contrary to established doctrines of the day or, indeed, unbelievable in themselves. Forever free from compulsory exactions for the support of any religious organization was the property of all men. Forever free from compulsory church attendance were the persons of all citizens. Forever free from legislative let or hindrance were the rites and ceremonies of all faiths.[4] These, then, were the enduring protections inseparably attached to the very structure of the organic law of the land, and applicable to the states through incorporation in the guarantees of the Fourteenth Amendment. *Cantwell v. Connecticut*, 310 U. S. 296 (1940).

How fare Appellants' contentions in the present case when tested against these principles of religious freedom established by the First and Fourteenth Amendments? Can it be said that the enforcement of the Pennsylvania Act of August 10, 1959, P. L. 660, by preventing Appellants from operating their retail businesses on Sunday, so interferes with the free exercise of their religion that it invades the area reserved from official action by these constitutional safeguards?

Appellants' religion does not require them to engage in any commercial activity on Sunday; much less does it adjure them to conduct a retail business that requires for its profitable operation sales on six days including Sunday. So much Appellants concede. (Appellants' Brief, p. 29) But, having done so, they are in no better position to complain than those who, although not required by their faith to cease from business activity on Saturday, or indeed, any day, nevertheless depend upon Sunday sales for the successful operation of their enterprises. *Cf. Two Guys from Harrison-Allentown, Inc. v. McGinley*, No. 36, October Term, 1960.

The case made out by Appellants for interference with their free exercise of religion amounts to no more

4. *Reynolds v. United States*, 98 U.S. 145 (1878); *Davis v. Beason*, 133 U.S. 333 (1890).

than this: By cumulative effect, a legislative restriction upon an individual's conduct, which is in addition to a similar restriction voluntarily adopted by an individual in obedience to the dictates of his faith, may work a substantial economic hardship upon the individual, inducing him to give up the command of conscience. This financial pressure upon the individual to abjure the tenets of his religion is said to be the responsibility of the statute and turns the Act into an instrumentality of interference with the free exercise of religion within the ban of the First and Fourteenth Amendments.

Their case must fail. The religious scriptures of this world are filled with "Thou shalt nots," and if constitutional competence to enforce legislative prohibitions can be made to depend upon the non-existence of similar but additional interdictions in articles of faith, each man's belief would be the measure of his civil obedience. But, observance of the civil law cannot be made subservient to observance of the canonical; the protection of the First and Fourteenth Amendments does not reach so far.[5]

Far different by nature and effect upon religious freedom is the present statute from the ordinance considered by this Court in *Follett v. Town of McCormack*, 321 U. S. 573 (1944). There, the Court struck down the imposition of a business license tax upon an evangelist of Jehovah's Witnesses, engaged in the door to door selling of religious tracts and books, on the ground that the tax was laid upon the practice of his faith. This was so because although Follett was dependent for his living upon his calling, he was nevertheless engaged in a "religious" rather than a "commercial" venture. (Id. at 575) Follett could not therefore be made "to pay a tax for the exercise of that which the First Amendment has made a high constitutional privilege." (Id. at 578)

It seems difficult to escape the impression that the

5. *Cf. Reynolds v. United States*, 98 U.S. 145, 166-67 (1878); *Davis v. Beason*, 133 U.S. 333 (1890):

real objection of Appellants here is to economic loss and not infringement of religious scruples. Religion is being employed by these Appellants as an excuse for insulating themselves from the financial hardship which even the irreligious might equally suffer under the Pennsylvania Sunday Closing Law. The "exercise" which is protected by the Constitution is surely the exercise, without commercial motives, of freedom of worship.[6]

By way of extension of their principal argument, Appellants press the contention that not only will they be tempted to give up their good standing as Orthodox Jews in order to avoid financial harm, but also that their faith would itself be hindered in its efforts to attract and maintain as adherents those persons who might be engaged in similar businesses operating under similar conditions. This objection cannot be sustained because the underlying necessary factual premises are singularly absent from the instant record. This Court is asked to assume that Orthodox Judaism is a proselytizing faith, desirous of gathering within its fold even those of little faith who would be induced by the type of hardship here asserted to give up their religion. We must speak out against the acceptance of so unwarranted an assumption.

Passing beyond this consideration, we come to the very heart of the issue and challenge the right of these five merchants even to maintain such an argument. By what authority do Appellants presume to speak for organized Orthodox Judaism? They are not, and do not claim to be, duly constituted officials or representatives of this faith charged with such responsibility. We submit that under the averments of their amended complaint, Appellants lack

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6. *Follett v. Town of McCormick*, 321 U.S. 573 (1944). *Cf. Otten v. Baltimore & Ohio R. R. Co.*, 205 F. 2d 58 (2d Cir. 1953), (L. Hand, J.—Employees are not excused from joining a union as required under a union shop contract because of religious scruples.). Compare *Zorach v. Clauson*, 343 U.S. 306, 311 (1952); (Mr. Justice Douglas: "It takes obtuse reasoning to inject any issue of the 'free exercise' of religion into the present case.")

the standing necessary to raise this question. *Cf. Doremus v. Board of Education*, 342 U. S. 429 (1952).

In view of the foregoing, the further question which Appellants pose—whether legislation which has the effect of abridging the free exercise of religion must successfully pass judicial examination as to the existence of "a clear and present danger" to a vital public interest—is not reached on this appeal. But see, *Prince v. Massachusetts*, 321 U. S. 158 (1944); *Cox v. New Hampshire*, 312 U. S. 569 (1941); *Cantwell v. Connecticut*, 310 U. S. 296 (1940). Appellants have failed to establish a present or threatened State interference with their religious practices.

For like reason, it is unnecessary to consider whether the present Act is to be subject to the "more exacting judicial scrutiny" enunciated in *United States v. Carolene Products Co.*, 304 U. S. 144, 152, n. 4 (1938). Appellants have also failed to establish that the Pennsylvania Sunday Closing Law is aimed at "particular religious . . . minorities" or that prejudice directed against such minorities so undermines the workings of the traditional political processes that they cannot be relied upon to afford protection.

It is sufficient for purposes of withstanding constitutional attack that the Pennsylvania Act is one which serves a public purpose. See *Brief of Retail Clerks International Association, AFL-CIO, amicus curiae*. In this connection, we need dwell but briefly on Appellants' argument that business on Sunday is a piece of "cultural pluralism" deserving of preservation at the expense of public desire for a uniform Sunday closing law. Whatever the merits of their philosophical contention, it is addressed to the wrong forum. The choice of competing social policies is made by the Legislature, not the Courts. And, once the Legislature has made its decision, even though unwisely, there the matter ends.

2. THE ACT OF AUGUST 10, 1959, P. L. 660, DOES NOT CONSTITUTE A LAW "RESPECTING AN ESTABLISHMENT OF RELIGION" WITHIN TH" PROHIBITION OF THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION; THE PROHIBITION UPON RETAILING ON SUNDAY OF SELECTED COMMODITIES DOES NOT PREFER NOR PROTECT CERTAIN SECTS TO THE PREJUDICE OF OTHERS.

The First Amendment's withdrawal of Congressional power to make laws "respecting an establishment of religion" was grounded in Colonial experience with that aspect of European political societies which has become known as "clericalism"—the lending of civil authority to ecclesiastical rules and the creation of an interstitial official hierarchy of State and Church. By purpose and careful design, the Amendment erected a wall of separation between Church and State. *Reynolds v. United States*, 98 U. S. 145, 164 (1878).[7]

The broad sweep of the Amendment carries beyond the interdiction of a national religion. It speaks equally against the preferment of one religion over another. Congress might not compel acceptance of the beliefs of one faith nor the renouncing of the heresies of another. It might not insist upon contributions for the support of one denomination, nor prohibit tithing for the aid of another. It might not require attendance at the church of one persuasion, nor proscribe admission to that of another. *Everson v. Board of Education*, 330 U. S. 1, 15-16, 18 (1947); *McCollum v. Board of Education*, 333 U. S. 203, 210-211 (1948). And, this power, which was forbidden to Congress, has, through the Fourteenth Amendment, likewise been prohibited to the legislatures of the several states. *Cantwell v. Connecticut*, 310 U. S. 296 (1940).

How stands, then, the Pennsylvania Sunday Closing Law in relation to this great constitutional prohibition?

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7. See also Zollman, American Church Law p. 7 (1933).

This statute does not prohibit the ceremonial practices or disallow the theology of one denomination, nor does it sanction those of another faith. It does not compel church attendance on Sunday, nor does it prevent such formal religious observance upon any other day. It does not deny the validity of the claims of those who consider the seventh day of the week to be the true sabbath and day of rest, nor does it lend legislative support to the claim of any sect which believes that Sunday is a holy day.

Nonetheless, the Appellants have labored to develop that general Sunday laws throughout history[8] were enacted by their creators for the sole purpose of aiding the established Christian religion in its efforts to sanctify Sunday as a Holy Day, free from the taint of secular activities. So conceived, the reason for the law failing, they argue, the law itself should fail. Instead of which, they observe, the laws have been perpetuated by the making up of new reasons. These are the so-called "latter day rationalizations."

However, what Appellants have failed to perceive in adopting the old arguments of the Sabbatarians is that they now tilt at windmills. It may very well be that the historic objective of Sunday legislation was to sanctify the "Lord's Day" in deference to dominant Christian theology. The passage of the centuries, and especially the rapid industrialization of the past fifty years, however, has worked a marked change in the concept of "Sunday" observance. The first day of the week is now a secular institution. To the religious and the irreligious alike, Sunday, as a community day of rest and relaxation, has become a part of their everyday pattern of living. Indeed, it may truly be said that there is scarcely an aspect of our national social, commercial and political life which has not accommodated

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8. Retail activities on Sunday seem to have been singled out for special treatment even under the Saxons. Marketing on Sunday was enjoined by Alfred of Wessex circa 878 A. D., and by Aethelstane circa 924 A.D. Lewis, Sunday Legislation 71-73 (1902); Johnson, The Legal Status of Church-State Relationships in the United States at 234 (1934).

itself to the concept of Sunday as a "day off".[9] See *Brief of Retail Clerks International Association, AFL-CIO.*

While this charge might be attributable, in part at least, to the enforcement of Sunday legislation here complained of, surely it is too late now to reassess the whys and wherefores of a custom so widely held. Sunday practices, as they exist today, may be accepted at their face value without reference to the cause of their creation. Until the present litigation, the Courts throughout the country were unanimous in upholding Sunday statutes as civil legislation establishing a uniform day of rest on a day which would involve the least inconvenience to the overwhelming majority of citizens.[10] *Soon Hing v. Crowley*, 113 U. S. 703 (1885); *Hennington v. Georgia*, 163 U. S. 299 (1896); *Petit v. Minnesota*, 177 U. S. 164 (1900); *Specht v. Commonwealth*, 8 Pa. 321 (1848).

Nothing daunted, Appellants continue their attack upon the Pennsylvania Sunday Closing Law here under consideration and argue that by purpose and effect the Act protects and prefers certain Christian sects by honoring the Christian holy day, the Lord's Day, and encouraging Christian worship on that day.[11] But, to claim so much from an Act which is concerned only with the retailing of

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9. As this Court knows, public agencies, including the Court itself, cease their normal activities, and even the President is not expected to exercise his daily duties on Sunday. Constitution, Article I, Section 7. Familiar also to this Court are the provisions commonly found in labor agreements for premium pay for Sunday labor.

10. Cases Collected, 83 C.J.S., Sunday, Sec. 3 (1953). Sunday laws are enforced in at least 47 states. Czarra, Sunday Statutes in a Modern Comunity, 61 Yale L.J. 247 (1952); Note, 73 Harv. L. Rev. 729, 732-33 (1960).

11. So far from being an aid to church attendance, compulsory Sunday rest laws have been denounced by some ministers as being responsible for the growth of the Sunday leisure industry which competes with the church for the patronage of the public and makes for what, according to some, is profanation rather than devotion.

selected commodities on Sunday overtaxes the imagination.

The Act of August 10, 1959, P. L. 660, cannot be so characterized. Economic, rather than religious, considerations gave rise to the statute.[12] For want of such legislation, because of the intensity of competition prevailing in certain types of retail businesses, individual entrepreneurs were being compelled to operate on a seven-day week. Further, that inequality of bargaining power between individual employee and employer, with which this Court is familiar, was responsible for so-called "white collar", clerical and sales personnel being forced to accept Sunday labor if they were to obtain work at all.[13] To remedy this condition, the present statute was enacted.

To the argument that the Legislature might have achieved its purpose by requiring the affected retail businesses to close on one day a week without specifying the particular day, it is sufficient to answer that the wisdom of the legislative choice is not the subject of judicial review. The existence of alternative methods of accomplishing a legitimate social goal does not invalidate the particular means the Legislature has selected. In regulating retail businesses and employment to accommodate the wishes of the majority of the citizens of this Commonwealth, the Legislature performed a civil function which does not offend the prohibition against the making of a law respecting an establishment of religion.

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12. See, e.g., The Pittsburgh Press, August 2, 1959, p. 24, col. 1; Transcript, Public Hearing S. B. 405 before House Rules Committee (June 24, 1959). *Cf. Gundaker Century Motors v. Gassert*, 23 N.J. 71, 127 A. 2d 566 (1956) app. dism. 354 U.S. 933 (1957); Note, 73 Harv. L. Rev. 729, 730-31 (1960); Johnson, The Legal Status of Church-State Relationships in the United States 265-266 (1934).

13. It may be noted that in this connection organized labor has made comparatively little headway in unionizing clerical employees. *See Brief of Retail Clerks International Association, AFL-CIO, amicus curiae*; Note, 73 Harv. L. Rev. 729, 735 (1960).

3. THE ACT OF AUGUST 10, 1959, P. L. 660, DOES NOT VIOLATE THE EQUAL PROTECTION AND DUE PROCESS CLAUSES OF THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION BECAUSE IT PROHIBITS THE RETAILING ON SUNDAY OF CERTAIN COMMODITIES AND NOT OTHERS.

Decent burial was accorded Appellants' contentions on this aspect of the appeal by the opinion of Judge Hastie speaking for the statutory Court convened in *Two Guys from Harrison-Allentown, Inc., v. McGinley*, No. 36, October Term, 1960:

> "In larger context, cases arising under the Sunday closing laws are but a striking example of the continuing reluctance of the Supreme Court to interfere with even near whimsical classifications when made by state legislatures in the selection of schemes or areas or subject matter for economic regulations. *Cf. Williamson v. Lee Optical of Oklahoma, Inc.*, 1955, 348 U. S. 483; *Kotch v. Board of River Port Pilot Commissioners*, 1947, 330 U. S. 552; *Tigner v. Texas*, 1940, 310 U. S. 141. But *cf. Morey v. Doud*, 1957, 354 U. S. 457. While *Morey v. Doud* indicates that the Supreme Court will still strike down what it views as the most patently arbitrary of economic classifications we cannot ignore the fact that no Sunday law has seemed to the Court to raise even a substantial question in this area.
>
> "Moreover, in the case of the 1959 amendment of the Pennsylvania law, the circumstances attending or existing at the time of its enactment affirmatively suggest a rational basis for this legislative action. In the present record it appears and we find that the 1939 closing law was observed by most retail sellers in Lehigh County, though not all, who were subject to its provisions, until the very recent opening of substantial suburban retail businesses like that of the

plaintiff initiated and triggered new and rather large scale violations, and threats of others. It also appears in the testimony which is part of the legislative hearing on the bill which became the 1959 amendment of the Sunday closing law, that the small four dollar penalty of the earlier law was inadequate to deter the Sunday opening of large retail establishments which could easily absorb such small fines as an incidental cost of doing a profitable business. Moreover, it appeared that the types of commodities covered by this new enactment are principal categories of merchandise sold in these establishments which have made the problem of Sunday retail selling newly acute. It is probable that such considerations influenced the legislature's 1959 decision to make Sunday retail selling the subject of a new prohibitory enactment. In such circumstances we find it impossible to believe that the Supreme Court would treat this case as significantly different from those in which it has dismissed appeals for want of a substantial federal question." (Rec. 283-284; 179 F. Supp. 944, 952 (E. D. Pa. 1959).)

Appellants in the present case have abandoned all efforts to maintain their position that the Pennsylvania Act of August 10, 1959, P. L. 660, is "arbitrarily selective" in violation of the Equal Protection and Due Process Clauses of the Fourteenth Amendment. Instead, they have elected to rely upon the brief to be filed on behalf of the appellant in the *Two Guys* case. Under these circumstances, appellees Thomas J. Gibbons and Victor H. Blanc will not attempt anticipatory argument here, but request permission to file a further brief, if necessary, to meet the presentation on this issue which will be made by the appellant in *Two Guys*.

IV.

CONCLUSION

For the foregoing reasons, enforcement of the Pennsylvania Sunday Closing Law now before this Court will violate neither the First nor the Fourteenth Amendments to the Constitution of the United States and hence Appellees pray this Court to affirm the final order of the court below dismissing Appellants' amended complaint.

Respectfully submitted,

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SUPREME COURT OF THE UNITED STATES

No. 67.—October Term, 1960.

Abraham Braunfeld, et al., Appellants, v. Albert N. Brown, Commissioner of Police of the City of Philadelphia, Pennsylvania, et al.	On Appeal From the United States District Court for the Eastern District of Pennsylvania.

[May 29, 1961.]

Mr. Chief Justice Warren announced the judgment of the Court and an opinion in which Mr. Justice Black, Mr. Justice Clark, and Mr. Justice Whittaker concur.

This case concerns the constitutional validity of the application to appellants of the Pennsylvania criminal statute,[1] enacted in 1959, which proscribes the Sunday

[1] 18 Purdon's Pa. Stat. Ann. § 4699.10 provides:

"Selling certain personal property on Sunday

"Whoever engages on Sunday in the business of selling, or sells or offers for sale, on such day, at retail, clothing and wearing apparel, clothing accessories, furniture, housewares, home, business or office furnishings, household, business or office appliances, hardware, tools, paints, building and lumber supply materials, jewelry, silverware, watches, clocks, luggage, musical instruments and recordings, or toys, excluding novelties and souvenirs, shall, upon conviction thereof in a summary proceeding for the first offense, be sentenced to pay a fine of not exceeding one hundred dollars ($100), and for the second or any subsequent offense committed within one year after conviction for the first offense, be sentenced to pay a fine of not exceeding two hundred dollars ($200) or undergo imprisonment not exceeding thirty days in default thereof.

"Each separate sale or offer to sell shall constitute a separate offense.

"Information charging violations of this section shall be brought within seventy-two hours after the commission of the alleged offense and not thereafter."

retail sale of certain enumerated commodities. Among the questions presented are whether the statute is a law respecting an establishment of religion and whether the statute violates equal protection. Since both of these questions, in reference to this very statute, have already been answered in the negative, *Two Guys from Harrison-Allentown, Inc., v. McGinley*, — U. S. —, and since appellants present nothing new regarding them, they need not be considered here. Thus, the only question for consideration is whether the statute interferes with the free exercise of appellants' religion.

Appellants are merchants in Philadelphia who engage in the retail sale of clothing and home furnishings within the proscription of the statute in issue. Each of the appellants is a member of the Orthodox Jewish faith, which requires the closing of their places of business and a total abstention from all manner of work from nightfall each Friday until nightfall each Saturday. They instituted a suit in the court below seeking a permanent injunction against the enforcement of the 1959 statute. Their complaint, as amended, alleged that appellants had previously kept their places of business open on Sunday; that each of appellants had done a substantial amount of business on Sunday, compensating somewhat for their closing on Saturday; that Sunday closing will result in impairing the ability of all appellants to earn a livelihood and will render appellant Braunfeld unable to continue in his business, thereby losing his capital investment; that the statute is unconstitutional for the reasons stated above.

A three-judge court was properly convened and it dismissed the complaint on the authority of the *Two Guys From Harrison* case, 184 F. Supp. 352. On appeal brought under 28 U. S. C. § 1253, we noted probable jurisdiction, 362 U. S. 987.

Appellants contend that the enforcement against them of the Pennsylvania statute will prohibit the free exercise of their religion because, due to the statute's compulsion to close on Sunday, appellants will suffer substantial economic loss, to the benefit of their non-Sabbatarian competitors, if appellants also continue their Sabbath observance by closing their businesses on Saturday; that this result will either compel appellants to give up their Sabbath observance, a basic tenet of the Orthodox Jewish faith, or will put appellants at a serious economic disadvantage if they continue to adhere to their Sabbath. Appellants also assert that the statute will operate so as to hinder the Orthodox Jewish faith in gaining new adherents. And the corollary to these arguments is that if the free exercise of appellants' religion is impeded, that religion is being subjected to discriminatory treatment by the State.

In *McGowan* v. *Maryland*, — U. S. —, —, we noted the significance that this Court has attributed to the development of religious freedom in Virginia in determining the scope of the First Amendment's protection. We observed that when Virginia passed its Declaration of Rights in 1776, providing that "all men are equally entitled to the free exercise of religion," Virginia repealed its laws which in any way penalized "maintaining any opinions in matters of religion, forebearing to repair to church, or the exercising any mode of worship whatsoever." But, Virginia retained its laws prohibiting Sunday labor.

We also took cognizance, in *McGowan*, of the evolution of Sunday Closing Laws from wholly religious sanctions to legislation concerned with the establishment of a day of community tranquillity, respite and recreation, a day when the atmosphere is one of calm and relaxation rather than one of commercialism, as it is during the other six

days of the week. We reviewed the still growing state preoccupation with improving the health, safety, morals and general well-being of our citizens.

Concededly, appellants and all other persons who wish to work on Sunday will be burdened economically by the State's day of rest mandate; and appellants point out that their religion requires them to refrain from work on Saturday as well. Our inquiry then is whether, in these circumstances, the First and Fourteenth Amendments forbid application of the Sunday Closing Law to appellants.

Certain aspects of religious exercise cannot, in any way, be restricted or burdened by either federal or state legislation. Compulsion by law of the acceptance of any creed or the practice of any form of worship is strictly forbidden. The freedom to hold religious beliefs and opinions is absolute. *Cantwell* v. *Connecticut*, 310 U. S. 296, 303; *Reynolds* v. *United States*, 98 U. S. 145, 166. Thus, in *West Virginia State Board of Education* v. *Barnette*, 319 U. S. 624, this Court held that state action compelling school children to salute the flag, on pain of expulsion from public school, was contrary to the First and Fourteenth Amendments when applied to those students whose religious beliefs forbade saluting a flag. But, this is not the case at bar; the statute before us does not make criminal the holding of any religious belief or opinion, nor does it force anyone to embrace any religious belief or to say or believe anything in conflict with his religious tenets.

However, the freedom to act, even when the action is in accord with one's religious convictions, is not totally free from legislative restrictions. *Cantwell* v. *Connecticut*, *supra*, at pp. 303–304, 306. As pointed out in *Reynolds* v. *United States*, *supra*, at p. 164, legislative power over mere opinion is forbidden but it may reach people's actions when they are found to be in violation of impor-

tant social duties or subversive of good order, even when the actions are demanded by one's religion. This was articulated by Thomas Jefferson when he said:

> "Believing with you that religion is a matter which lies solely between man and his God, that he owes account to none other for his faith or his worship, that *the legislative powers of the government reach actions only, and not opinions*, I contemplate with sovereign reverence that act of the whole American people which declared that their legislature should 'make no law respecting an establishment of religion, or prohibiting the free exercise thereof,' thus building a wall of separation between church and State. Adhering to this expression of the supreme will of the nation in behalf of the rights of conscience, I shall see with sincere satisfaction the progress of those sentiments which tend to restore to man all his natural rights, convinced *he has no natural right in opposition to his social duties.*" (Emphasis added.) 8 Works of Thomas Jefferson 113.[2]

And, in the *Barnette* case, the Court was careful to point out that "the freedom asserted by these appellees does not bring them into collision with rights asserted by any other individual. It is such conflicts which most frequently require intervention of the State to determine where the rights of one end and those of another begin. . . . It

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[2] Oliver Ellsworth, a member of the Constitutional Convention and later Chief Justice, wrote:

"But while I assert the rights of religious liberty, I would not deny that the civil power has a right, in some cases, to interfere in matters of religion. It has a right to prohibit and punish gross immoralities and impieties; because the open *practice* of these is of evil example and detriment." (Emphasis added.) Written in the Connecticut Courant, Dec. 17, 1787, as quoted in 1 Stokes, Church and State in the United States, 535.

is . . . to be noted that the compulsory flag salute and pledge requires *affirmation of a belief* and an *attitude of mind*." 319 U. S., at 630, 633. (Emphasis added.)

Thus, in *Reynolds* v. *United States*, this Court upheld the polygamy conviction of a member of the Mormon faith despite the fact that an accepted doctrine of his church then imposed upon its male members the *duty* to practice polygamy. And, in *Prince* v. *Massachusetts*, 321 U. S. 158, this Court upheld a statute making it a crime for a girl under eighteen years of age to sell any newspapers, periodicals or merchandise in public places despite the fact that a child of the Jehovah's Witnesses faith believed that it was her religious *duty* to perform this work.

It is to be noted that, in the two cases just mentioned, the religious practices themselves conflicted with the public interest. In such cases, to make accommodation between the religious action and an exercise of state authority is a particularly delicate task, *id.*, at 165, because resolution in favor of the State results in the choice to the individual of either abandoning his religious principle or facing criminal prosecution.

But, again, this is not the case before us because the statute at bar does not make unlawful any religious practices of appellants; the Sunday law simply regulates a secular activity and, as applied to appellants, operates so as to make the practice of their religious beliefs more expensive. Furthermore, the law's effect does not inconvenience all members of the Orthodox Jewish faith but only those who believe it necessary to work on Sunday. And even these are not faced with as serious a choice as

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See the concurring opinion of Mr. Justice Cardozo, joined by Mr. Justice Brandeis and Mr. Justice Stone, in *Hamilton* v. *Regents*, 293 U. S. 245, 265–268.

forsaking their religious practices or subjecting themselves to criminal prosecution. Fully recognizing that the alternatives open to appellants and others similarly situated—retaining their present occupations and incurring economic disadvantage or engaging in some other commercial activity which does not call for either Saturday or Sunday labor—may well result in some financial sacrifice in order to observe their religious beliefs, still the option is wholly different than when the legislation attempts to make a religious practice itself unlawful.

To strike down, without the most critical scrutiny, legislation which imposes only an indirect burden on the exercise of religion, *i. e.*, legislation which does not make unlawful the religious practice itself, would radically restrict the operating latitude of the legislature. Statutes which tax income and limit the amount which may be deducted for religious contributions impose an indirect economic burden on the observance of the religion of the citizen whose religion requires his to donate a greater amount to his church; statutes which require the courts to be closed on Saturday and Sunday impose a similar indirect burden on the observance of the religion of the trial lawyer whose religion requires him to rest on a weekday. The list of legislation of this nature is nearly limitless.

Needless to say, when entering the area of religious freedom, we must be fully cognizant of the particular protection that the Constitution has accorded it. Abhorrence of religious persecution and intolerance is a basic part of our heritage. But we are a cosmopolitan nation made up of people of almost every conceivable religious preference. These denominations number almost three hundred. Year Book of American Churches, for 1958, 257 *et seq.* Consequently, it cannot be expected, much less required, that legislators enact no law regulating conduct that may in some way result in an economic dis-

advantage to some religious sects and not to others because of the special practices of the various religions. We do not believe that such an effect is an absolute test for determining whether the legislation violates the freedom of religion protected by the First Amendment.

Of course, to hold unassailable all legislation regulating conduct which imposes solely an indirect burden on the observance of religion would be a gross oversimplification. If the purpose or effect of a law is to impede the observance of one or all religions or is to discriminate invidiously between religions, that law is constitutionally invalid even though the burden may be characterized as being only indirect. But if the State regulates conduct by enacting a general law within its power, the purpose and effect of which is to advance the State's secular goals, the statute is valid despite its indirect burden on religious observance unless the State may accomplish its purpose by means which do not impose such a burden. See *Cantwell* v. *Connecticut, supra*, at pp. 304–305.[4]

As we pointed out in *McGowan* v. *Maryland, supra*, at pp. ——, we cannot find a State without power to provide a weekly respite from all labor and, at the same time, to set one day of the week apart from the others as a day of rest, repose, recreation and tranquillity—a day when the hectic tempo of everyday existence ceases and a more pleasant atmosphere is created, a day which all members of the family and community have the opportunity to spend and enjoy together, a day in which people may visit friends and relatives who are not available during working days, a day when the weekly

[4] Thus in cases like *Murdock* v. *Pennsylvania*, 319 U. S. 105 and *Follett* v. *McCormick*, 321 U. S. 573, this Court struck down municipal ordinances which, in application, required religious colporteurs to pay a license tax as a condition to the pursuit of their activities because the State's interest, the obtaining of revenue, could be easily satisfied by imposing this tax on nonreligious sources.

laborer may best regenerate himself. This is particularly true in this day and age of increasing state concern with public welfare legislation.

Also, in *McGowan*, we examined several suggested alternative means by which it was argued that the State might accomplish its secular goals without even remotely or incidentally affecting religious freedom: — U. S., at —. We found there that a State might well find that those alternatives would not accomplish bringing about a general day of rest. We need not examine them again here.

However, appellants advance yet another means at the State's disposal which they would find unobjectionable. They contend that the State should cut an exception from the Sunday labor proscription for those people who, because of religious conviction, observe a day of rest other than Sunday. By such regulation, appellants contend, the economic disadvantages imposed by the present system would be removed and the State's interest in having all people rest one day would be satisfied.

A number of States provide such an exemption,[5] and this may well be the wiser solution to the problem. But our concern is not with the wisdom of legislation but with its constitutional limitation. Thus, reason and experience teach that to permit the exemption might well undermine the State's goal of providing a day that, as best possible, eliminates the atmosphere of commercial noise and activity. Although not dispositive of the issue, enforcement problems would be more difficult since there would be two or more days to police rather than one and it would be more difficult to observe whether violations were occurring.

Additional problems might also be presented by a regulation of this sort. To allow only people who rest

[5] *E. g.*, Ind. Ann. Stat. § 10-4301.

on a day other than Sunday to keep their businesses open on that day might well provide these people with an economic advantage over their competitors who must remain closed on that day;[6] this might cause the Sunday-observers to complain that their religions are being discriminated against. With this competitive advantage existing, there could well be the temptation for some, in order to keep their businesses open on Sunday, to assert that they have religious convictions which compel them to close their businesses on what had formerly been their least profitable day. This might make necessary a state-conducted inquiry into the sincerity of the individual's religious beliefs,[7] a practice which a State might believe would itself run afoul of the spirit of constitutionally protected religious guarantees. Finally, in order to keep the disruption of the day at a minimum, exempted employers would probably have to hire employees who themselves qualified for the exemption because of their own religious beliefs,[8] a practice which a State might feel to be opposed to its general policy prohibiting religious discrimination in hiring.[9] For all of these reasons, we cannot say

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[6] "If he [the Orthodox Jewish storekeeper] opens on Saturday, he is subjected to very fierce competition indeed from Christian shopkeepers, whereas on Sunday, supposing he closes on Saturday, he has an absolutely free run and no competition from Christian shopkeepers at all." 311 Parliamentary Debates, Commons, 492

"It is true that the orthodox Jew will only be allowed to trade until two o'clock on Sunday, but during that time he will have a monopoly. That is a tremendous advantage. In many districts he will be the only trader with a shop open in that district." 101 Parliamentary Debates, Lords, 430.

[7] Connecticut, which has such an exemption statute, requires that Sabbatarians, in order to qualify, file a written notice of religious belief with the prosecuting attorney. Conn. Gen. Stat. Rev. § 53-303.

[8] *E. g.*, Va. Code Ann., § 18.1-359.

[9] *E. g.*, 43 Purdon's Pa. Stat. Ann., §§ 951-963.

that the Pennsylvania statute before us is invalid, either on its face or as applied.

MR. JUSTICE HARLAN concurs in the judgment. MR. JUSTICE BRENNAN and MR. JUSTICE STEWART concur in our disposition of appellants' claims under the Establishment Clause and the Equal Protection Clause. MR. JUSTICE FRANKFURTER and MR. JUSTICE HARLAN have rejected appellants' claim under the Free Exercise Clause in a separate opinion.

Accordingly, the decision is

Affirmed.

SUPREME COURT OF THE UNITED STATES

No. 67.—October Term, 1960.

Abraham Braunfeld, et al., Appellants, v. Albert N. Brown, Commissioner of Police of the City of Philadelphia, Pennsylvania, et al.	On Appeal From the United States District Court for the Eastern District of Pennsylvania.

[May 29, 1961.]

Mr. Justice Brennan, concurring and dissenting.

I agree with The Chief Justice that there is no merit in appellants' establishment and equal-protection claims. I dissent, however, as to the claim that Pennsylvania has prohibited the free exercise of appellants' religion.

The Court has demonstrated the public need for a weekly surcease from worldly labor, and set forth the considerations of convenience which have led the State of Pennsylvania to fix Sunday as the time for that respite. I would approach this case differently, from the point of view of the individuals whose liberty is—concededly—curtailed by these enactments. For the values of the First Amendment, as embodied in the Fourteenth, look primarily towards the preservation of personal liberty, rather than towards the fulfillment of collective goals.

The appellants are small retail merchants, faithful practitioners of the Orthodox Jewish faith. They allege—and the allegation must be taken as true, since the case comes to us on a motion to dismiss the complaint—that ". . . one who does not observe the Sabbath [by refraining from labor] . . . cannot be an Orthodox Jew." In appellants' business area Friday night and Saturday are busy times; yet appellants, true to their faith, close

during the Jewish Sabbath, and make up some, but not all, of the business thus lost by opening on Sunday. "Each of the plaintiffs," the complaint continues, "does a substantial amount of business of Sundays, and the ability of the plaintiffs to earn a livelihood will be greatly impaired by closing their business establishment on Sundays." Consequences even more drastic are alleged: "Plaintiff, Abraham Braunfeld, will be unable to continue in his business if he may not stay open on Sunday and he will thereby lose his capital investment." In other words, the issue in this case—and we do not understand either appellees or the Court to contend otherwise—is whether a State may put an individual to a choice between his business and his religion. The Court today holds that it may. But I dissent, believing that such a law prohibits the free exercise of religion.

The first question to be resolved, however, is somewhat broader than the facts of this case. That question concerns the appropriate standard of constitutional adjudication in cases in which a statute is assertedly in conflict with the First Amendment, whether that limitation applies of its own force, or as absorbed through the less definite words of the Fourteenth Amendment. The Court in such cases is not confined to the narrow inquiry whether the challenged law is rationally related to some legitimate legislative end. Nor is the case decided by a finding that the State's interest is substantial and important, as well as rationally justifiable. This canon of adjudication was clearly stated by Mr. Justice Jackson, speaking for the Court in *West Virginia State Board of Education* v. *Barnette*, 319 U. S. 624, 639 (1943):

> "In weighing arguments of the parties it is important to distinguish between the due process clause of the Fourteenth Amendment as an instrument for transmitting the principles of the First Amendment and those cases in which it is applied for its own

sake. The test of legislation which collides with the Fourteenth Amendment, because it also collides with the principles of the First, is much more definite than the test when only the Fourteenth is involved. Much of the vagueness of the due process clause disappears when the specific prohibitions of the First become its standard. The right of a State to regulate, for example, a public utility may well include, so far as the due process test is concerned, power to impose all of the restrictions which a legislature may have a "rational basis" for adopting. But freedoms of speech and of press, of assembly, and of worship may not be infringed on such slender grounds. They are susceptible of restriction only to prevent grave and immediate danger to interests which the State may lawfully protect. It is important to note that while it is the Fourteenth Amendment which bears directly upon the State it is the more specific limiting principles of the First Amendment that finally govern this case."

This exacting standard has been consistently applied by this Court as the test of legislation under all clauses of the First Amendment, not only those specifically dealing with freedom of speech and of the press. For religious freedom—the freedom to believe and to practice strange and, it may be, foreign creeds—has classically been one of the highest values of our society. See, *e. g.*, *Murdock* v. *Pennsylvania*, 319 U. S. 105, 115 (1943); *Jones* v. *City of Opelika*, 319 U. S. 103 (1943); *Martin* v. *City of Struthers*, 319 U. S. 141 (1943); *Follett* v. *Town of McCormick*, 321 U. S. 573 (1944); *Marsh* v. *Alabama*, 326 U. S. 501, 510 (1946). Even the most concentrated and fully articulated attack on this high standard has seemingly admitted its validity in principle, while deploring some incidental phraseology. See *Kovacs* v. *Cooper*, 336 U. S. 77, 89, 95–96 (1949) (concurring opin-

ion); but cf. *Ullmann* v. *United States*, 350 U. S. 422 (1956). The honored place of religious freedom in our constitutional hierarchy, suggested long ago by the argument of counsel in *Permoli* v. *Municipality No. 1 of the City of New Orleans*, 3 How. 589, 600 (1845), and foreshadowed by a prescient footnote in *United States* v. *Carolene Products Co.*, 304 U. S. 144, 152, n. 4 (1938), must now be taken to be settled. Or at least so it appeared until today. For in this case the Court seems to say, without so much as a deferential nod towards that high place which we have accorded religious freedom in the past, that any substantial state interest will justify encroachments on religious practice, at least if those encroachments are cloaked in the guise of some nonreligious public purpose.

Admittedly, these laws do not compel overt affirmation of a repugnant belief, as in *Barnette*, nor do they prohibit outright any of appellants' religious practices, as did the federal law upheld in *Reynolds* v. *United States*, 98 U. S. 145 (1878), cited by the Court. That is, the laws do not say that appellants must work on Saturday. But their effect is that appellants may not simultaneously practice their religion and their trade, without being hampered by a substantial competitive disadvantage. Their effect is that no one may at one and the same time be an Orthodox Jew and compete effectively with his Sunday-observing fellow tradesmen. This clog upon the exercise of religion, this state-imposed burden on Orthodox Judaism, has exactly the same economic effect as a tax levied upon the sale of religious literature. And yet, such a tax, when applied in the form of an excise or license fee, was held invalid in *Follett* v. *Town of McCormick*, *supra*. All this the Court, as I read its opinion, concedes.

What, then, is the compelling state interest which impels the Commonwealth of Pennsylvania to impede appellants' freedom of worship? What overbalancing need is so weighty in the constitutional scale that it justi-

fies this substantial, though indirect, limitation of appellants' freedom? It is not the desire to stamp out a practice deeply abhorred by society, such as polygamy, as in *Reynolds*, for the custom of resting one day a week is universally honored, as the Court has amply shown. Nor is it the State's traditional protection of children, as in *Prince* v. *Massachusetts*, 321 U. S. 158 (1944), for appellants are reasoning and fully autonomous adults. It is not even the interest in seeing that everyone rests one day a week, for appellants' religion requires that they take such a rest. It is the mere convenience of having everyone rest on the same day. It is to defend this interest that the Court holds that a State need not follow the alternative route of granting an exemption for those who in good faith observe a day of rest other than Sunday.

It is true, I suppose, that the granting of such an exemption would make Sundays a little noisier, and the task of police and prosecutor a little more difficult. It is also true that a majority—21—of the 34 States which have general Sunday regulations have exemptions of this kind.[1] We are not told that those States are significantly noisier, or that their police are significantly more burdened, than Pennsylvania's. Even England, not under the compulsion of a written constitution, but simply influenced by con-

[1] Conn. Gen. Stat., 1958 rev., § 53-303; Fla. Laws 1959, c. 59-1650, § 2; Ill. Rev. Stat., 1959, c. 38, § 549; Burns' Ind. Ann. Stat., 1956 repl., § 10-4301; Kan. Gen. Stat. Ann., 1949, § 21-953; Ky. Rev. Stat., 1959, § 436.160 (2); Me. Rev. Stat., 1954, c. 134, § 44; Mass. Gen. Laws Ann., 1958, c. 136, § 6; Mich. Stat. Ann., 1957 rev., §§ 18.855, 18.122, 9.2702; Mo. Rev. Stat., 1953, § 563.700; Neb. Rev. Stat., 1943, § 28-940; N. J. Stat. Ann., 1953, § 2A:171-4; McKinney's N. Y. Laws, Penal Law § 2144; N. D. Rev. Code 1943, § 12-2117; Page's Ohio Gen. Code Ann., 1954, § 13045; Okla. Stat. Ann., 1958, Tit. 21, § 909; R. I. Gen. Laws, 1956, § 11-40-4; S. D. Code, 1939, § 13.1710; Tex. Pen. Code § 284; Va. Code, 1950, § 18.1-359; Wash. Rev. Code, 1959, § 9.76.020; W. Va. Code Ann., 1955, c. 61, Art. 8, § 6073. Cf. Wis. Stat. Ann., 1958, § 301.33.

siderations of fairness, has such an exemption for some activities.[2] The Court conjures up several difficulties with such a system which seem to me more fanciful than real. Non-Sunday observers might get an unfair advantage, it is said. A similar contention against the draft exemption for conscientious objectors (another example of the exemption technique) was rejected with the observation that "its unsoundness is too apparent to require" discussion. *Selective Draft Law Cases*, 245 U. S. 366, 390 (1918). However widespread the complaint, it is legally baseless, and the State's reliance upon it cannot withstand a First Amendment claim. We are told that an official inquiry into the good faith with which religious beliefs are held might be itself unconstitutional. But this Court indicated otherwise in *United States* v. *Ballard*, 322 U. S. 78 (1944). Such an inquiry is no more an infringement of religious freedom than the requirement imposed by the Court itself in *McGowan* v. *Maryland*, *ante*, p. —, decided this day, that a plaintiff show that his good-faith religious beliefs are hampered before he acquires standing to attack a statute under the Free-Exercise Clause of the First Amendment.[3] Finally, I find the Court's mention of a problem under state anti-discrimination statutes almost chimerical. Most such statutes provide that hiring may be made on a religious basis if religion is a *bona fide* occupational qualification. It happens, moreover, that Pennsylvania's statute has such a provision.[4]

In fine, the Court, in my view, has exalted administrative convenience to a constitutional level high enough to justify making one religion economically disadvantageous. The Court would justify this result on the ground that the

[2] *E. g.*, Shops Act, 1950, 14 Geo. VI, c. 28, § 53.

[3] *E. g.*, Mass. Gen. Laws Ann., 1958, c. 151B, § 4 (1).

[4] 43 Purdon's Pa. Stat. Ann., § 955.

effect on religion, though substantial, is indirect. The Court forgets, I think, a warning uttered during the congressional discussion of the First Amendment itself: ". . . the rights of conscience are in their nature, of peculiar delicacy, and will little bear the gentlest touch of governmental hand . . . ."[1]

I would reverse this judgment and remand for a trial of appellants' allegations, limited to the free-exercise-of-religion issue.

[1] 1 Annals of Cong. 730 (remarks of Representative Daniel Carroll of Maryland, August 15, 1789).

SUPREME COURT OF THE UNITED STATES

No. 67.—October Term, 1960.

Abraham Braunfeld, et al., Appellants, v. Albert N. Brown, Commissioner of Police of the City of Philadelphia, Pennsylvania, et al.	On Appeal From the United States District Court for the Eastern District of Pennsylvania.

[May 29, 1961.]

Mr. Justice Stewart, dissenting.

I agree with substantially all that Mr. Justice Brennan has written. Pennsylvania has passed a law which compels an Orthodox Jew to choose between his religious faith and his economic survival. That is a cruel choice. It is a choice which I think no State can constitutionally demand. For me this is not something that can be swept under the rug and forgotten in the interest of enforced Sunday togetherness. I think the impact of this law upon these appellants grossly violates their constitutional right to the free exercise of their religion.